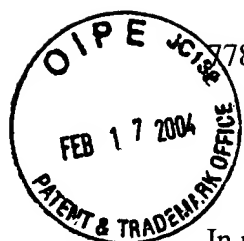


AP/1772



77831

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re Application of: Rolf Lasson

Title: A CREASE LINED PACKAGING
LAMINATE, A METHOD OF
PROVIDING A PACKAGING
LAMINATE WITH CREASE LINES,
AND PACKAGING PRODUCED
FROM THE LAMINATE

Serial No.: 09/214,022

Filed: December 23, 1998

Examiner: Alicia Ann Chevalier

Art Unit: 1772

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Date

John W. Rensert
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TRANSMITTAL OF RESUBMITTAL OF
APPLICANT'S BRIEF ON APPEAL UNDER 37 C.F.R. §1.192

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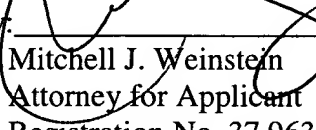
Responsive to the NOTIFICATION OF NON-COMPLIANCE WITH
37CFR1.192(c), mailed February 9, 2004, Applicant submits herewith three (3) copies of
RESUBMITTAL OF APPLICANT'S BRIEF ON APPEAL UNDER 37 C.F.R. §1.192 in
which a statement indicating that claims 1-13 and 18 were previously cancelled and
claims 19-26 are pending but were withdrawn from consideration as a result of an earlier,
not traversed, restriction requirement.

Applicant submits that the Brief is fully in comport with §1.192 and respectfully
requests consideration on the merits.

Applicant believes that there is no fee due in connection with the present resubmittal. If however, there is a fee due, the Commissioner is authorized to charge any such payment to Deposit Account 23-0920.

Respectfully submitted,

WELSH & KATZ, LTD.

By: 
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Serial No.: 09/214,022)


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RESUBMITTAL OF
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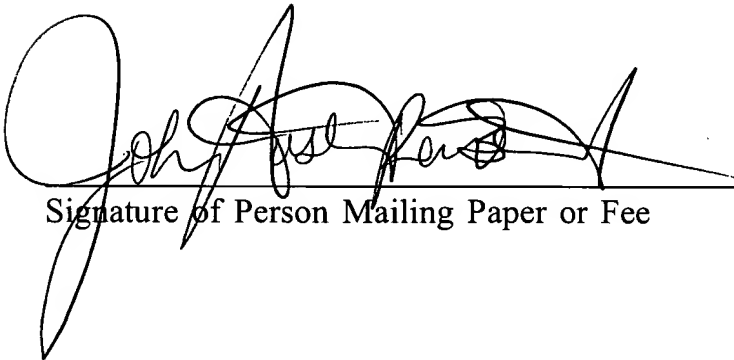
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A P P E A L B R I E F

REAL PARTY IN INTEREST

Tetra Laval Holdings & Finance, S.A., the Assignee is the real party in interest

RELATED APPEALS AND INTERFERENCES

There are no related appeals or interferences.

STATUS OF CLAIMS

Claims 14-17 and 27-30 are pending. These claims having been finally rejected are now on appeal.

Claims 1-13 and 18 were previously cancelled. Claims 19-26 are pending but were withdrawn from consideration as a result of an earlier restriction requirement.

STATUS OF AMENDMENTS

No amendments to pending claims 14-17 and 27-30 were filed after the date of the final rejection.

SUMMARY OF THE INVENTION

The subject invention is directed to a packaging laminate (20). The laminate is formed from first and second layers (11, 12) bonded to one another at a first bond strength. The first and second layers are coextensive with one another (see, Figs. 1b and 2).

The laminate has a plurality of linear fold regions (15, spec. page 5, line 29 - page 6, line 9), each of which overlies and defines a corresponding crease line in the laminate. The fold regions have a (second) bond strength that is less than the first bond strength (the bond strength between the layers). That is, the bond strength at the fold regions is less than the bond strength at the other (planar) regions of the laminate (page 6, lines 2-

14). The second bond strength permits the first and second layers to separate from one another when the laminate is folded at the crease lines (page 5, lines 18-21 and Fig. 1B).

A liquid-tight coating is disposed on the first layer outwardly or opposite of the second layer and a liquid-tight coating disposed on the second layer outwardly or opposite of the first layer essentially forming a sandwich construction (page 7, lines 26-29). A packaging container formed from the laminate is also disclosed (page 5, lines 16-18).

ISSUES PRESENTED

1. Whether claims 14, 16, 27, 28, and 30 are unpatentable under 35 U.S.C. § 103 over Zinn, U.S. Patent No. 2,558,918 in view of Applicant's specification in the Background art.

2. Whether claims 15 and 29 are unpatentable under 35 U.S.C. § 103 over Zinn in view of Applicant's specification in the Background art and further in view of Skjelby, U.S. Patent No. 4,206,867.

3. Whether claim 17 is unpatentable under 35 U.S.C. § 103 over Zinn in view of Applicant's specification in the Background art and further in view of Hecking, U.S. Patent No. 4,712,737 or Nagata, U.S. Patent No. 4,909,432.

GROUPING OF CLAIMS

Claims 14-17 and 27-30 are pending in the present application and are on appeal. Two of the claims are independent, namely claims 14 and 27. Claims 15-17 depend from claim 14 and claims 28-30 depend from claim 27.

All of the claims pending and appealed claims stand or fall together.

ARGUMENT

I. Summary of the Prior Art Applied

A. Applicant's Specification

The Background of the Invention section of the specification provides a summary of some known packaging materials. In the Action made final mailed August 6, 2003, the Examiner sets forth the background art that is used as one of the principal bases for rejecting the claims. Specifically, the Examiner identifies the statements describing the large group of disposable packages that are produced from laminated materials that have a core layer of paper or paperboard and outer liquid tight coatings of plastic on both sides of the core. The background section also provides that the laminate may include layers of plastic and/or metal to impart superior barrier properties against, for example, gases and light.

B. Zinn, U.S. Patent No. 2,558,918

The Examiner has characterized the Zinn Patent as disclosing a carton for holding fine grain or liquid material that comprises a cardboard blank adhesively attached to a liner except at regions adjacent to the crease lines. The Examiner states further that the lined carton is provided with a plurality of crease lines and that since the crease lines are not provided with adhesive the bond strength of the crease line region is less than the bond strength for the non-creased regions which are provided with adhesive. This permits the liner to separate from the cardboard blank at the corners when the carton is folded.

The Examiner however concedes that Zinn fails to disclose that the cardboard blank and liner are coextensive with one another and further concedes that Zinn fails to disclose a liquid-tight coating disposed on the first layer outwardly of the second layer and a liquid tight coating disposed on the second layer outwardly of the first layer.

C. Skjelby, U.S. Patent No. 4,206,867

The Examiner has characterized the Skjelby Patent as disclosing a coated paper board container and blank with a plurality of fold and non-fold regions and crease lines where some of the fold regions are treated with an adhesive. The adhesive coating may be made of any suitable material, such as a wax-based material, and permits easy separation between layers.

D. Hecking, U.S. Patent No. 4,712,737

The Examiner has cited the Hecking Patent for its disclosing a carton having paperboard lined with aluminum foil.

E. Nagata, U.S. Patent No. 4,909,432

The Examiner has cited the Nagata Patent for it disclosing a container having a thick paper lined with polyethylene, aluminum or the like.

II. The Present Invention - Claim 14 and its Dependent Claims

The invention as defined by claim 14 is directed to a packaging laminate. The laminate is formed from a first layer and a second layer bonded to the first layer. The layers are bonded to each other having a first bond strength. The first and second layers are coextensive with one another.

The laminate has a plurality of linear fold regions. The fold regions overlie and define a corresponding crease line in the laminate. The fold regions have a bond strength that is less than the first bond strength (the bond strength between the layers). The lesser bond strength at the fold regions provides for the first and second layers separating from one another when the laminate is folded at the crease lines.

A liquid-tight coating is disposed on the first layer outwardly or opposite of the second layer and a liquid-tight coating is disposed on the second layer outwardly or opposite of the first layer.

Essentially the lesser bond strength at the creases or folds permits the layers to separate when the material is folded, such as when forming a carton. Separation of the layers, for example, the separation of the outer paperboard from a liner, reduces the possibility that the liner will crack or otherwise break during the various operations carried out on the material, e.g., during carton formation.

Claims 15-17 which depend from claim 14 are directed to how the second fold region is made to have a lesser bond strength (claims 15-16) and the materials forming the laminate (claim 17).

III. The Present Invention - Claim 27 and its Dependent Claims

The invention as defined by claim 27 is directed to a package that is formed from the laminate material of claim 14. Dependent claims 28-30 are directed to how the second fold region is made to have a lesser bond strength.

IV. The Examiner's Rejections

The rejections discussed in this section are those rejections that the Examiner set forth in the Action mailed August 6, 2003, which action was made final by the Examiner.

A. The Rejection of Claims 14, 16, 27-28 and 30 under 35 U.S.C. §103 (Rejection No. 1)

The Examiner has finally rejected claims 14, 16, 27-28 and 30 under 35 U.S.C. §103 over Zinn in view of the background art. The Examiner has taken the position that Zinn discloses a carton adapted to hold fine grain or liquid material that is formed from a cardboard blank adhesively attached to a liner except at regions adjacent to the crease lines. The Examiner states further that the lined carton is provided with a plurality of crease lines and that since the crease lines are not provided with adhesive the bond strength of the crease line region is less than the bond strength for the non-creased regions which are provided with adhesive. This, the Examiner states, permits the liner to separate from the cardboard blank at the corners when the carton is folded, referring to figure 3 of Zinn.

The Examiner concedes that Zinn fails to disclose that the cardboard blank and liner are coextensive with one another and that Zinn fails to disclose a liquid-tight coating disposed on the first layer outwardly of the second layer and a liquid tight coating disposed on the second layer outwardly of the first layer. However, the conclusions are made that: (1) it would have been obvious to one of ordinary skill in the art at the time

the invention was made to make the layers coextensive, with the motivation being that one of ordinary skill would be motivated to do so because it would make manufacturing the carton faster and it would insure that the entire carton would be lined; and (2) it would have been obvious to one of ordinary skill in the art at the time of the invention to add a liquid tight coating disposed on the first layer outwardly of the second layer and a liquid tight coating disposed on the second layer outwardly of the first layer as taught by the background art in the specification to Zinn's carton because it would increase the barrier properties against liquids leaking out of the carton when used for containing liquids.

B. The Rejection of Claims 15 and 29 under 35 U.S.C. §103 (Rejection No. 2)

Next, the Examiner has finally rejected claims 15 and 29 under 35 U.S.C. §103 over Zinn in view of the background art and further in view of Skjelby. The Examiner has stated that Zinn and the background art disclose all the limitations of the claimed invention except that the fold regions are treated with an adhesion counteracting agent. The Examiner then cites to Skjelby for its disclosure of a coated paper board container and blank with a plurality of fold and non-fold regions and crease lines where some of the fold regions are treated with an adhesive. The adhesive coating may be made of any suitable material, such as a wax-based material, and permits easy separation between layers. The Examiner concluded that it would have been obvious to one of ordinary skill in the art at the time the invention was made to add the adhesive material of Skjelby to the crease lines of Zinn because it would help the liner more easily separate from the cardboard blank at the corners.

C. The Rejection of Claim 17 under 35 U.S.C. §103 (Rejection No. 3)

Last, the Examiner has finally rejected claim 17 under 35 U.S.C. §103 over Zinn in view of the background art and further in view of Hecking or Nagata. The Examiner stated that Zinn and the background art disclose all the limitations of the claimed invention except for the liner being made of aluminum or greaseproof paper. Hecking is cited for its disclosure of a carton formed from a paperboard lined aluminum foil. Nagata is cited for its

disclosure of a container formed from a thick paper lined with polyethylene, aluminum or the like. In view of these patents the Examiner concluded that it would have been obvious to one of ordinary skill in the art at the time the invention was made to use a polyethylene or aluminum liner as suggested by Hacking or Nagata depending on the type of material to be contained by the carton, i.e. a liquid or a solid material.

V. The Examiner Has Failed to Show a Suggestion, Motivation or Teaching to Make the Combination as Recited in Claims 14 and 27 (Rejection No. 1)

The Examiner has failed to meet the burden for a showing of obviousness because there has been no showing of a teaching, suggestion or motivation in the prior art to make the asserted combination.

The Patent Office has the burden to establish a prima facie case of obviousness of the claimed subject matter as a whole within the meaning of § 103. In re Fine, 837 F.2d 1071, 1074, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988), citing, In re Piasecki, 745 F.2d 1468, 1471-72, 223 U.S.P.Q. 785, 787-88 (Fed. Cir. 1984). Further, the burden is only satisfied by illustrating a teaching in the prior art or generally available knowledge that would lead one skilled in the art to combine references. In re Lalu, 747 F.2d 703, 705, 223 U.S.P.Q. 1257, 1258 (Fed. Cir. 1984). The Examiner here has not adequately met this burden.

Turning first to independent claim 14, in the final Action the Examiner rejected this claim as unpatentable over the Zinn patent in view of the background art. The Examiner has taken the position that Zinn substantially shows the claimed subject matter but does not show the layers being coextensive with one another or the inner and outer liquid-tight plastic coatings. To account for this deficiency in the Zinn patent, the Examiner references the background art for its disclosure of coextensive liner and core layers and liquid-tight coatings. Whether the combination of Zinn and the background art would in fact make the claimed invention is arguable. Even more basic, however, is that the Examiner has completely failed to provide anything from within the cited art (the Zinn patent or the background art) that would suggest, teach or motivate one to make such a combination. Rather, it is Applicant's position that the Examiner is relying solely on impermissible hindsight to make this combination, and that the Zinn patent, in fact, teaches only partial liner coverage.

With respect to the combination asserted by the Examiner, the Examiner has justified this combination and the "hindsight" used to make the combination, stating that "it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon on hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper", citing In re McLaughlin, 443 F.2d 1392, 170 U.S.P.Q. 209 (CCPA 1971).

In fact, it is applicant's position that the Zinn patent contemplates liners present only on the four side walls of the carton (which is inapposite to the core and liner being coextensive with one another), i.e., discloses only partial liner coverage, rather than the coextensive layers as claimed. The Zinn patent, at column 3, lines 49-52 provides that: "[t]he present invention contemplates the provision of a liner for the four side walls of the carton which liner is indicated by the numeral 11 in Figures 1, 2 and 3." The Zinn patent does not state that it contemplates the provision of a liner for the carton, but *for the four side walls of the carton*. Thus, applicant submits that Zinn does not in fact contemplate coextensive layers, but only an insert-type liner arrangement. As such, the combination of Zinn and the background art to "make" the claimed invention is completely without basis and support in the references.

Applicant submits that the Examiner's rejection is a hindsight rejection pulling together selected pieces of the prior art references without any suggestion, motivation or teaching within those references to make the combinations. Although one may argue that such combinations might be obvious to try when using hindsight while looking at the prior art references, this is not the proper standard for a finding of obviousness under 35 U.S.C. §103. In re Geiger, 815 F.2d 686, 688, 2 USPQ2d 1276, 1278 (Fed. Cir. 1987); In re Yates, 663 F.2d 1054, 1057, 211 U.S.P.Q. 1149, 1151 (CCPA 1981), citing, In re Goodwin, 576 F.2d 375, 377, 198 U.S.P.Q. 1, 3 (CCPA 1978); In re Warner, 379 F.2d 1011, 1016, 154 U.S.P.Q.173, 177 (CCPA 1967).

Rather, when an obviousness determination is based upon multiple prior art references, there must be some "teaching, suggestion or reason" to combine the references and the "absence of such a suggestion to combine is dispositive in an obviousness

determination.” Gambro Lundia AB v. Baxter Healthcare Corp., 110 F.3d 1573, 1579, 42 USPQ2d 1378, 1383 (Fed. Cir. 1997). The showing of a suggestion, teaching or motivation must be clear and particular. Broad conclusory statements regarding the teaching of multiple references, standing alone, are not “evidence” of a suggestion, motivation or teaching. In re Dembiczak, 175 F.3d 994, 1000, 50 USPQ2d 1614, 1617 (Fed. Cir. 1999) (citations omitted).

An Examiner may often find all of the elements of a claim in the prior art. However,

“[i]f identification of each claimed element in prior art were sufficient to negate patentability, very few patents would ever issue. Furthermore, rejecting patents solely by finding prior art corollaries for the claimed elements would permit an examiner to use the claimed invention itself as a blueprint for piecing together elements in the prior art to defeat the patentability of the claimed invention. Such an approach would be an illogical and inappropriate process by which to determine patentability To prevent the use of hindsight based on the invention to defeat patentability of the invention, [] the examiner [is required to show] a motivation to combine the references that create the case of obviousness. In other words, the examiner must show reasons that the skilled artisan, confronted with the same problems as the inventor and with no knowledge of the claimed invention, would select the elements from the cited prior art references for combination.”

In re Rouffet, 149 F.3d 1350, 1357, 47 USPQ2d 1453, 1457 (Fed. Cir. 1998) (citations omitted).

In the present case, it is Applicant's position that the Examiner's combination of the background art and the Zinn patent lacks the motivation, teaching or suggestion necessary to combine these references. While the Examiner states (with respect to the coextensive layers) that the combination "would make manufacturing the carton faster and insure the entire carton would be lined" there is nothing to support this desired end. And, the Zinn patent specifically states that it contemplates the provision of a liner for the four side walls of a carton, not the entirety of the carton as is the case when the layers are coextensive with one another. To this end, it is Applicant's position that the combination asserted by the Examiner is improper because of the lack of a motivation, teaching or suggestion to make the combination, and is indeed, one could view, taught away from by the partial lining coverage specifically taught in the Zinn patent.

Moreover, a review of the Zinn patent shows that it deals with the problem that the

"liner" may break at folding in the fold regions. Zinn does not appear to intend to use adhesion-free zones as a means to obviate expensive creasing tools, increase the grip stability of the package and provide an attractive appearance, as is the purpose of the present invention. As provided in the specification:

the present invention provides a grip stable packaging container with well-defined side edges which is produced by fold forming of a packaging laminate according to the present invention.

By selectively reducing or eliminating the bonding adhesive strength between the layers in a packaging laminate which comprises at least two such layers, along the linear regions along which the packaging laminate is to be folded, relatively complex, conventional creasing processes using expensive creasing tools can be obviated, at the same time as the fold edges of the packaging container will be more distinct and the packaging container will thereby be given attractive appearance with good handling stability and durability.

Specification page 3, line 35 - page 4, line 9.

In contrast, the liner of Zinn has score lines 71 in addition to the crease lines 15 of the blank. This necessitates a juxtaposition of the pre-provided lines of the two sheets and results in a complicated process. Furthermore, since the liner in the Zinn patent is only provided at the side panels, normal creasing at the top and bottom of the carton blank is necessary. The Zinn patent appears not to contemplate at all that the adhesion-free zones can entirely substitute for conventional crease lines. In addition, it appears that in Zinn, a much stiffer and thicker liner than say aluminum foil is contemplated and one skilled in the art would not, without hindsight, see that the method of folding a blank with such a thick liner would be directly applicable to thin aluminum foil-lined carton and that it could make conventional creasing unnecessary or less critical.

In the present laminate, the adhesion-free zones are rational and simple compared to the juxtaposition philosophy of Zinn.

Applicant thus submits that the Examiner has failed to meet the burden to establish a prima facie case of obviousness of the claimed subject matter as a whole within the meaning of § 103.

VI. *The Examiner Has Failed to Show a Suggestion, Motivation or Teaching to Make the Combination as Recited in Claims 15 and 29 (Rejection No. 2)*

Claims 15 and 29 depend from claims 14 and 27. To this end, Applicant submits that the basis for rejecting claims 15 and 29, that is the combination of the Zinn patent and the background art simply fails to make obvious the claimed invention. For this reason, Applicant submits that it has not been shown that claims 15 and 29 would have been obvious to one of skill in the art, because of the failure to show that their respective base claims would have been obvious to one skilled in the art.

VII. The Examiner Has Failed to Show a Suggestion, Motivation or Teaching to Make the Combination as Recited in Claim 17 (Rejection No. 3)

For the reasons stated above, Applicant submits that the Examiner has failed to show that claim 17, which depends from claim 14, would have been obvious to one of ordinary skill in the art.

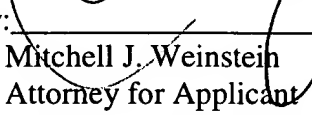
Thus, Applicant submits that the Examiner has failed to meet the burden to show that the invention "would have been obvious" in that there has been no showing of a motivation, teaching or suggestion to make the asserted combination.

CONCLUSION

In conclusion, Applicant submits that the claims 14-17 and 27-30 as presently pending would not have been obvious to one of skill in the art, even given the cited references, because the references individually or in any combination lack the necessary teaching, motivation or suggestion to combine the references under 35 U.S.C. §103. To this end, Applicant respectfully requests that the Board reverse the decision of the Examiner finally rejecting Claims 14-17 and 27-30.

Respectfully submitted,

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APPENDIX - CLAIMS ON APPEAL

14. A packaging laminate comprising:
a first layer;
a second layer bonded to the first layer having a first bond strength, the first and second layers being coextensive with one another;
a plurality of linear fold regions, each fold region overlying and defining a corresponding crease line of the packaging laminate, the plurality of linear fold regions having a bond strength less than the first bond strength, wherein when the laminate is folded at the crease lines, the first and second layers separate from one another; and
a liquid-tight coating disposed on the first layer outwardly of the second layer and a liquid-tight coating disposed on the second layer outwardly of the first layer.
15. The packaging laminate according to claim 14 wherein the linear fold regions are treated with an adhesion counter-acting agent.
16. The packaging laminate according to claim 14 wherein the non-fold regions are treated with an adhesion agent.
17. The packaging laminate according to claim 14 wherein the first layer is paperboard and the second layer is selected from the group consisting of aluminum or a greaseproof paper.
27. A packaging container comprising:
a first layer having a first plurality of linear fold regions, each linear fold region defining a corresponding crease line of the packaging container, the first layer also having a first plurality of non-fold regions;
a second layer coextensive with the first layer, the second layer having a second plurality of linear fold regions, each of the linear fold regions defining a corresponding crease line of the packaging container, the second layer also having a second plurality of non-fold regions,

the first layer first plurality of non-fold regions being bonded to the second layer second plurality of non-fold regions at a first bond strength greater than a bond strength of the first layer first plurality of linear fold regions and the second layer second plurality of linear fold regions, wherein when the bonded first and second layers are folded at the crease lines, the first and second layers separate from one another at the linear fold regions; and

a liquid-tight coating disposed on the first layer outwardly of the second layer and a liquid-tight coating disposed on the second layer outwardly of the first layer.

28. The packaging container according to claim 27 wherein the non-fold regions of at least one of the first and second layers is darkened relative to the linear fold regions.

29. The packaging container according to claim 27 further comprising an adhesion counteracting agent applied to at least one of the plurality of linear fold regions.

30. The packaging container according to claim 27 further comprising an adhesion agent applied to at least one of the non-fold regions of the packaging container.

TABLE OF AUTHORITIES

In re Fine, 837 F.2d 1071, 1074, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988).

In re Piasecki, 745 F.2d 1468, 1471-72, 223 U.S.P.Q. 785, 787-88 (Fed. Cir. 1984).

In re Lalu, 747 F.2d 703, 705, 223 U.S.P.Q. 1257, 1258 (Fed. Cir. 1984).

In re McLaughlin, 443 F.2d 1392, 170 U.S.P.Q. 209 (CCPA 1971).

In re Geiger, 815 F.2d 686, 688, 2 USPQ2d 1276, 1278 (Fed. Cir. 1987).

In re Yates, 663 F.2d 1054, 1057, 211 U.S.P.Q. 1149, 1151 (CCPA 1981).

In re Goodwin, 576 F.2d 375, 377, 198 U.S.P.Q. 1, 3 (CCPA 1978).

In re Warner, 379 F.2d 1011, 1016, 154 U.S.P.Q.173, 177 (CCPA 1967).

Gambro Lundia AB v. Baxter Healthcare Corp., 110 F.3d 1573, 1579, 42 USPQ2d 1378, 1383 (Fed. Cir. 1997).

In re Dembiczak, 175 F.3d 994, 1000, 50 USPQ2d 1614, 1617 (Fed. Cir. 1999) (citations omitted).

In re Rouffett, 149 F.3d 1350, 1357, 47 USPQ2d 1453, 1457 (Fed. Cir. 1998) (citations omitted).